

REMARKS/ARGUMENTS

Responsive to the Office Action dated November 17, 2005, Applicant has amended Claims 1, 7 and 10. Accordingly, Claims 1-12 remain pending for prosecution with Claims 1, 7, 10, and 12 being independent.

I. 35 U.S.C. § 112 Rejection

Claims 1-11 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In accordance with the Examiner's suggestion, Applicant has amended Claims 1, 7 and 10 to be definite and respectfully requests withdrawal of this rejection.

II. 35 U.S.C. § 102 Rejection

Claims 1-12 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,432,473 to MacEwan. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

MacEwan does not anticipate the present invention because MacEwan fails to disclose each and every element of Applicant's invention as claimed. In particular, MacEwan fails to disclose applying a layer of hot melt adhesive to the terminal perimeter edge of the plug to seal the plug with the cartridge body interior surface. Rather, MacEwan teaches a paperboard sidewall that includes a metal foil laminate adhered to the inner surface and a thin coating of a normally solid thermoplastic material adhered to the metal foil. A radially outwardly extending closure lip is formed on the first end portion of the plug top closure. Contrary to the assertion in the Office Action, there is no teaching of a thermoplastic material being applied to the closure

lip. The annular seal between the closure lip and the metal foil laminate is achieved by fusing the outer surface of the closure lip and the polyethylene film laminate. In this context, Applicant respectfully submits that fusing the closure lip and the polyethylene film laminate together is not the same as the application of a hot melt adhesive. To the contrary, fusing results in a permanent bond whereas hot melt adhesives can be repeatably softened and melted by heat and hardened or set by cooling, allowing the removal or repositioning of parts during assembly. Thus, Applicant respectfully that MacEwan's melting and fusing of the thermoplastic material to the closure lip cannot be read as applying a layer of hot melt adhesive.

Accordingly, MacEwan clearly does not teach applying a layer of hot melt adhesive to the terminal perimeter edge of the plug to seal the plug with the cartridge body interior surface. Because MacEwan fails to teach all of the elements of Applicant's independent Claims 1, 7, 10 and 12 and the claims depending therefrom, it cannot therefore anticipate the invention as claimed.

III. 35 U.S.C. § 103 Rejection

Claims 1-12 were also rejected, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over MacEwan. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim

limitations. The teaching or suggestion to make the claim combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

MacEwan does not teach or suggest the claimed invention. For the same reasons as discussed above in connection with the § 102 rejection, MacEwan fails to teach or suggest applying a layer of hot melt adhesive to the terminal perimeter edge of the plug to seal the plug with the cartridge body interior surface. Rather, MacEwan teaches a paperboard sidewall that includes a metal foil laminate adhered to the inner surface and a thin coating of a normally solid thermoplastic material adhered to the metal foil. A radially outwardly extending closure lip is formed on the first end portion of the plug top closure. Contrary to the assertion in the Office Action, there is no teaching of a thermoplastic material being applied to the closure lip. The annular seal between the closure lip and the metal foil laminate is achieved by fusing the outer surface of the closure lip and the polyethylene film laminate. In this context, Applicant respectfully submits that fusing the closure lip and the polyethylene film laminate together is not the same as the application of a hot melt adhesive. To the contrary, fusing results in a permanent but fragile bond that offers no resilience to the connection. This is to be contrasted to the claimed use of hot melt adhesives which are capable of acting as a shock absorber if the cartridge body is dropped. Further, since the hot melt is more of a fillet connection between the disk and cartridge body, a filled cartridge (container) is much less likely to leak and provides an overall package of enhanced strength and durability. Thus, Applicant respectfully that MacEwan's melting and fusing of the thermoplastic material to the closure lip cannot be read as applying a layer of hot melt adhesive and does not suggest a similarly contrasted package/cartridge.

Moreover, it is asserted in the Office Action that it would have been obvious to one skilled in the art to have modified MacEwan's method by incorporating the application of "the hot melt adhesive layer to the terminal periphery edge of the plug and the cartridge body interior surface just as it (the hot melt adhesive) [is] being applied to dispensing head." Applicant respectfully submits that MacEwan teaches away from the use of hot melt adhesive at the terminal periphery edge of the plug because such use would obviate the need for the paperboard sidewall that includes a metal foil laminate adhered to the inner surface and a thin coating of a normally solid thermoplastic material adhered to the metal foil. It is the thin coating of thermoplastic material that is fused to the closure lip to create a seal.

Prima facie obviousness requires that there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. No such suggestion or motivation exists in MacEwan to apply a layer of hot melt adhesive to the terminal perimeter edge of the plug to seal the plug with the cartridge body interior surface. Moreover, the prior art reference must teach or suggest all the claim limitations. As discussed above, MacEwan fails to teach or suggest all of the elements of Applicant's independent Claims 1, 7, 10 and 12 and the claims depending therefrom. Unless all the elements are taught by the references, there can be no success in modifying them.

Thus, at the time the present invention was made, MacEwan fails to teach or describe all of the limitations claimed by Applicant in independent Claims 1, 7, 10 and 12 and the claims depending therefrom. Accordingly, Claims 1-12 are nonobvious under § 103(a).

IV. Conclusion

Applicant respectfully submits that the present application is now in condition for allowance and such is courteously solicited. If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's amendment, or if the Examiner should have any questions regarding the present amendment, it is respectfully requested that the Examiner please telephone Applicant's undersigned attorney in this regard. The Examiner's attention is also drawn to the proper correspondence address shown below. Should any fees be necessitated by this response, the Commissioner is hereby authorized to deduct such fees from Deposit Account No. 11-0160.

Respectfully submitted,

Date: 2/16/2006



William B. Kircher

Reg. No. 22,481
Blackwell Sanders Peper Martin LLP
4801 Main St., Suite 1000
Kansas City, MO 64112
816-983-8000
ATTORNEYS FOR APPLICANT